

ORDER NO. 1933

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;  
Robert G. Taub, Vice Chairman; and  
Mark Acton

Competitive Product Prices  
Inbound Competitive Multi-Service Agreements with  
Foreign Postal Operators  
Australian Postal Corporation – United States  
Postal Service Bilateral Agreement (MC2010-34)  
Negotiated Service Agreement

Docket No. CP2014-12

ORDER APPROVING ADDITIONAL INBOUND COMPETITIVE MULTI-SERVICE  
AGREEMENT WITH FOREIGN POSTAL OPERATORS 1  
NEGOTIATED SERVICE AGREEMENT  
(WITH AUSTRALIAN POSTAL CORPORATION)

(Issued December 30, 2013)

I. INTRODUCTION

The Postal Service seeks inclusion of the inbound portion of a bilateral agreement (Agreement) with Australian Post Corporation (Australia Post) within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1

(Foreign Postal Operators 1) product (MC2010-34) on the competitive product list.<sup>1</sup> For the reasons discussed below, the Commission approves the request.

## II. BACKGROUND

*Product History.* In Order No. 546, following consideration in Docket Nos. MC2010-34 and CP2010-95, the Commission approved the Foreign Postal Operators 1 product, based on Governors' Decision No. 10-3, and contemporaneously included an agreement within the new product.<sup>2</sup> Since then, the Postal Service has requested, and the Commission has approved, the inclusion of additional agreements within the competitive Foreign Postal Operators 1 product on grounds of functional equivalence to the TNT Agreement, including an existing agreement with Australia Post (2012 Agreement).<sup>3</sup> The 2012 Agreement is scheduled to expire December 31, 2013. Notice at 2.

*Instant Agreement.* The inbound portion of the Agreement concerns delivery of inbound Air CP and Express Mail Services (EMS) in the United States. *Id.* at 3. The Postal Service's filing consists of the Notice, redacted financial workpapers, and four attachments. Attachment 1 is a redacted copy of the Agreement. Attachment 2 is the certified statement required by 39 CFR § 3015.5(c)(2). Attachment 3 is a redacted copy

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<sup>1</sup> Notice of United States Postal Service of Filing Functionally Equivalent Inbound Competitive Multi-Service Agreement with a Foreign Postal Operator (Australian Post Corporation), December 11, 2013 (Notice).

<sup>2</sup> Docket Nos. MC2010-34 and CP2010-95, Order Adding Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 to the Competitive Product List and Approving Included Agreement, September 29, 2010 (Order No. 546). The included agreement was the Koninklijke TNT Post BV and TNT Post Pakketservice Benelux BV (TNT Agreement). *Id.* at 1-2. See *also* Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Inbound Competitive Multi-Service Agreements with Foreign Postal Operators (Governors' Decision No.10-3), August 6, 2010.

<sup>3</sup> Docket No. CP2012-1, Order Concerning an Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement, November 9, 2011 (Order No. 956).

of Governors' Decision No. 10-3. Attachment 4 is an application for non-public treatment of materials.

### III. THE POSTAL SERVICE'S POSITION

The Postal Service asserts that its filing demonstrates that the Agreement fits within the Mail Classification Schedule (MCS) language in Governors' Decision No. 10-3. *Id.* The Postal Service identifies the Agreement as the successor to the 2012 Agreement approved in Order No. 956. It states that the Commission found the 2012 Agreement to be appropriately classified in the competitive Foreign Postal Operators 1 product because it met all applicable statutory and regulatory requirements. *Id.* at 2-3. Additionally, it contends that the Agreement is functionally equivalent to the 2012 Agreement. *Id.* at 7.

The Agreement's intended effective date is January 1, 2014, unless the parties propose and agree to an alternative date. *Id.* at 3, Attachment 1 at 2. The Agreement is set to expire two years from the effective date, unless, among other things, either party terminates the Agreement in accordance with Article 8 or it is extended by Amendment. *Id.*, Attachment 1 at 9.

*Functional equivalence.* The Postal Service identifies the 2012 Agreement as the baseline agreement for purposes of determining functional equivalence. *Id.* at 2, 5. It states that the inbound portion of the Agreement is substantially similar to the inbound portion of the 2012 Agreement between the same two parties in terms of the products being offered and cost characteristics. *Id.* at 5. It also states that the Agreement, like the 2012 Agreement, fits within the parameters outlined by Governors' Decision No. 10-3, which establishes rates for the competitive Foreign Postal Operators 1 product. *Id.*

The Postal Service identifies differences between the Agreement and the 2012 Agreement. *Id.* at 5-6. However, it states that the two agreements incorporate the same cost attributes and methodology, and that the relevant cost and market

characteristics are similar, if not the same. *Id.* at 6. The Postal Service does not consider the specified differences as affecting either the fundamental service the Postal Service is offering or the fundamental structure of the agreements. *Id.* It asserts that nothing detracts from the conclusion that these agreements are “functionally equivalent in all pertinent respects.” *Id.* (Citation omitted.) The Postal Service therefore contends that for the reasons it presents, and as demonstrated by the financial data filed under seal, it has established that the Agreement is in compliance with 39 U.S.C. § 3633 and is functionally equivalent to the 2012 Agreement previously included within the Foreign Postal Operators 1 product. *Id.* at 7.

#### IV. COMMENTS

The Public Representative filed comments on December 24, 2013.<sup>4</sup> No other comments were received. The Public Representative states that he has reviewed the Agreement and the supporting financial model filed under seal. *Id.* at 2. He concludes that the Agreement is sufficiently similar to the 2012 Agreement for purposes of a baseline comparison and that the Agreement should generate sufficient revenues to cover cost and satisfy the requirements of section 3633. *Id.* at 2-3.

*Functional Equivalence.* The Public Representative believes that the 2012 Agreement is an appropriate baseline for the instant Agreement. *Id.* at 3. He concludes that the differences between the two agreements are minor and that the Agreement is functionally equivalent to the 2012 Agreement.

*Consistency with Statutory Criteria.* The Public Representative notes that under 39 U.S.C. § 3633(a), the Postal Service must demonstrate that the Agreement covers its attributable costs and precludes the subsidization of competitive products by market dominant products. *Id.* Based on his review of the financial model filed under seal, the

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<sup>4</sup> Public Representative Comments, December 24, 2103 (PR Comments). Concurrently, the Public Representative filed Public Representative Motion for Late Acceptance of Comments, December 24, 2103. This motion is granted.

Public Representative concludes that the Agreement should generate sufficient revenues to cover costs and that the estimated cost coverage complies with section 3633(a). *Id.*

#### IV. COMMISSION ANALYSIS

The Commission's responsibility with respect to an agreement of this type is to ensure that the Agreement is functionally equivalent to the baseline agreement and satisfies the requirements of 39 C.F.R. §§ 3015.5 and 3015.7 and 39 U.S.C. § 3633.

*Functional equivalence.* For purposes of functional equivalence, the Postal Service compares the instant Agreement with the 2012 Agreement, stating that they share similar cost and market characteristics. Notice at 6. It asserts that the Agreement fits within the parameters outlined by Governors' Decision No. 10-3. *Id.* at 5.

The instant Agreement appears to be similar to the 2012 Agreement, although it differs in some minor respects relative to certain general terms. These differences notwithstanding, the Commission concludes that the Agreement is functionally equivalent to the 2012 Agreement and may be included in the Foreign Postal Operators 1 product.

*Compliance with 39 U.S.C. § 3633.* The Commission reviews competitive products to ensure that they meet the applicable requirements of rules 3015.5 and 3015.7, and 39 U.S.C. 3633. The Commission has reviewed the Notice, financial analyses provided under seal, and comments filed by the Public Representative in this proceeding. The Commission finds that the Agreement should cover its attributable costs (39 U.S.C. § 3633(a)(2)), should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. § 3633(a)(1)), and should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. § 3633(a)(3)). Thus, the Agreement indicates that it comports with the provisions applicable to rates for competitive products.

*Other considerations.* The Postal Service states that the parties intend for

January 1, 2014 as the effective date of the Agreement, unless the parties agree to an alternative effective date. If this date changes, the Postal Service shall notify the Commission of the agreed upon alternative effective date. The Postal Service shall promptly notify the Commission if the Agreement terminates earlier than its proposed term, but no later than the actual termination date.

In addition, within 30 days of expiration, or early termination of the Agreement, the Postal Service shall file costs, volumes, and revenues data associated with the Agreement.

In conclusion, the Commission finds that the Agreement submitted in Docket No. CP2014-12 is appropriately included within the Foreign Postal Operators 1 product.

#### V. ORDERING PARAGRAPHS

*It is ordered:*

1. The Commission approves the inclusion of the Agreement filed in Docket No. CP2014-12 within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-34) product.
2. The Postal Service shall notify the Commission of the effective date of the Agreement if it differs from the intended effective date.
3. If the Agreement terminates early, the Postal Service shall notify the Commission within 30 days of the termination date. The Postal Service shall also promptly notify the Commission if the Agreement is extended.

4. Within 30 days of expiration, or upon early termination of the Agreement, the Postal Service shall file costs, volumes, and revenues data associated with the Agreement.

By the Commission.

Shoshana M. Grove  
Secretary

## CHANGES TO THE MAIL CLASSIFICATION SCHEDULE

The following material represents a change to the Mail Classification Schedule. The Commission uses two main conventions when making changes to the product list. New text is underlined. Deleted text is struck through.

## Part B—Competitive Products

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### 2515.10 Inbound Competitive Multi-Service Agreements with Foreign Postal Operators

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#### 2515.10.5 Products Included in Group (Agreements)

Each product is followed by a list of agreements included within that product.

- Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1

*Baseline Reference*

Docket Nos. MC2010-34 and CP2010-95

PRC Order No. 546, September 29, 2010

*Included Agreements*

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Australian Postal Corporation, ~~CP2012-1~~CP2014-12, expires December 31, ~~2013~~2015

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